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7 Attorneys for Complainant

8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation and  
Petition to Revoke Probation Against:

12 **KATHLEEN E. KELLEY**  
13 2030 Four Oaks Hollow  
San Ramon, California 94583

14 Registered Nurse License No. 369761

15 Respondent.  
16

Case No. 2004-89

**ACCUSATION AND  
PETITION TO REVOKE  
PROBATION**

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H, R.N (Complainant) brings this Accusation and  
21 Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board  
22 of Registered Nursing, Department of Consumer Affairs.

23 2. On or about March 31, 1984, the Board of Registered Nursing issued  
24 Registered Nurse License Number 369761 to Kathleen E. Kelley (Respondent). The Registered  
25 Nurse License was in effect at all times relevant to the charges brought herein and will expire on  
26 April 30, 2008, unless renewed.

27 3. In a disciplinary action entitled "In the Matter of Accusation Against  
28 Kathleen E. Kelley," Case No. 2004-89, the Board of Registered Nursing issued a decision,

1 effective January 2, 2005, in which Respondent's Registered Nurse License was revoked.  
2 However, the revocation was stayed and Respondent's license was placed on probation for a  
3 period of three (3) years with certain terms and conditions. A copy of that decision is attached as  
4 Exhibit A and is incorporated by reference.

#### 5 6 JURISDICTION

7 4. This Accusation and Petition to Revoke Probation is brought before the  
8 Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of  
9 the following laws. All section references are to the Business and Professions Code unless  
10 otherwise indicated.

#### 11 12 STATUTORY PROVISIONS

13 5. Section 2750 of the Business and Professions Code (Code) provides, in  
14 pertinent part, that the Board may discipline any licensee, including a licensee holding a  
15 temporary or an inactive license, for any reason provided in Article 3 (commencing with section  
16 2750) of the Nursing Practice Act.

17 6. Section 2764 of the Code provides, in pertinent part, that the expiration of  
18 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding  
19 against the licensee or to render a decision imposing discipline on the license. Under section  
20 2811(b) of the Code, the Board may renew an expired license at any time within eight years after  
21 the expiration.

22 7. Section 2761 of the Code states, in pertinent part:

23 "The board may take disciplinary action against a certified or licensed nurse or  
24 deny an application for a certificate or license for any of the following:

25 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

26 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed  
27 nursing functions."

28 8. Section 2762 of the Code states, in pertinent part:

1 "In addition to other acts constituting unprofessional conduct within the meaning  
2 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed  
3 under this chapter to do any of the following:

4 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a  
5 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish  
6 or administer to another, any controlled substance as defined in Division 10 (commencing with  
7 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as  
8 defined in Section 4022.

9 . . .

10 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible  
11 entries in any hospital, patient, or other record pertaining to the substances described in  
12 subdivision (a) of this section."

13 9. California Code of Regulations, title 16, section 1442, states:

14 "As used in Section 2761 of the code, 'gross negligence' includes an extreme  
15 departure from the standard of care which, under similar circumstances, would have ordinarily  
16 been exercised by a competent registered nurse. Such an extreme departure means the repeated  
17 failure to provide nursing care as required or failure to provide care or to exercise ordinary  
18 precaution in a single situation which the nurse knew, or should have known, could have  
19 jeopardized the client's health or life."

20 10. California Code of Regulations, title 16, section 1443, states:

21 "As used in Section 2761 of the code, 'incompetence' means the lack of possession  
22 of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed  
23 and exercised by a competent registered nurse as described in Section 1443.5."

24  
25 DRUGS

26 11. Ativan® is a brand name of lorazepam, an antianxiety medication and a  
27 Schedule IV controlled substance pursuant to California Health and Safety Code section  
28 11057(d)(16).

12. Dilaudid® is a brand name of hydromorphone, a pain-reliever and Schedule II controlled substance pursuant to California Health and Safety Code section 11055(b)(1)(K).

13. Lortab® Elixir is a brand name of a compound of hydrocodone bitartrate and acetaminophen used for pain relief and is a Schedule III controlled substance pursuant to California Health and Safety Code section 11056(e)(4).

14. Meperidine is a pain reliever often known by the brand name Demerol® and is a Schedule II controlled substance pursuant to California Health and Safety Code section 11055(c)(17).

15. Morphine is a pain-reliever and Schedule II controlled substance pursuant to California Health and Safety Code section 11055(b)(1)(M).

16. Versed® is a brand name of midazolam, a sedative and Schedule IV controlled substance pursuant to California Health and Safety Code section 11057(d)(21).

17. Vicodin® is a brand name of a compound of hydrocodone bitartrate and acetaminophen used for pain relief and is a Schedule III controlled substance pursuant to California Health and Safety Code section 110569(e)(4).

#### RESPONDENT'S EMPLOYMENT

18. Respondent began working at San Ramon Regional Medical Center (hereinafter "Hospital") in or around July 2001 as a staff nurse. In or around May 2003, Respondent was hired as the Hospital's Emergency Department Nurse Director.

19. On January 12, 2005, at Respondent's probation orientation interview, Respondent was advised by her probation monitor that any employment needed to be approved by the Board, that she was not to supervise others, and that she was to receive the maximum level of supervision. She was further advised that until she received approval for her current job she was working contrary to Probation Condition No. 8.

20. On or around February 10, 2005, Respondent requested to keep her job

as the Hospital's Emergency Department Nurse Director. On or around February 11, 2005, the probation monitor informed Respondent that her job would have to be restructured and that the Board needed a revised description of Respondent's job duties. Respondent failed to respond to the probation monitor and instead continued to work as Nurse Director for more than a year after her request to keep her current job was denied.

21. On or around April 20, 2006, Respondent was again informed, this time by a new probation monitor, that she could not work as Nurse Director or in a nursing job that required her to supervise others. Respondent agreed to comply and on or around May 25, 2006, the Board approved a request for Respondent to work as an Emergency Department Registered Nurse (staff nurse) at the Hospital.

22. On or around November 14, 2006, the Hospital informed Respondent she would be receiving a written warning about inconsistencies in her narcotics documentation. (The inconsistencies are described in further detail in paragraphs 24 through 38, below.)

23. On or around December 8, 2006, the Hospital fired Respondent for her role in the care of an off-duty coworker who failed to register as a patient when he sought treatment at the Hospital's Emergency Department on November 7, 2006. (Respondent's conduct regarding this instance is described in further detail in paragraph 39, below.)

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Incompetence or Gross Negligence)

24. Respondent's registered nurse license is subject to discipline pursuant to section 2761(a) of the Code in that she engaged in unprofessional conduct by demonstrating incompetence or gross negligence in carrying out licensed nursing functions. The circumstances are that while working in the Emergency Department of San Ramon Regional Medical Center, Respondent repeatedly deviated from the standard of practice regarding documentation of care, as set forth in paragraphs 25 through 39, below.

25. On or around August 1, 2006, Respondent failed to document a doctor's order for her dispensation of 2 mg Ativan® in the case of Patient No. 9266420. Then,

1 Respondent either failed to account for 1 mg Ativan®, or documented an incorrect time of  
2 administration. (According to the documentation, 1 mg was given twenty minutes *before*  
3 Respondent dispensed 2 mg and obtained a witness signature to 1 mg waste.)

4           26. On or around August 3, 2006, Respondent failed to follow Hospital policy  
5 to document witness waste as soon as possible when she documented being a witness to waste of  
6 100 mg Meperidine and 3 mg Dilaudid® 10 ½ hours after the fact in the case of Patient No.  
7 9271214. In addition, Respondent admitted giving her pass code to access controlled drugs to  
8 another nurse, B.D.

9           27. On or around August 4, 2006, Respondent failed to account for 1 mg  
10 morphine in the case of Patient No. 9271347. (Respondent dispensed 10 mg with a 5 mg waste  
11 that was witnessed by another nurse, and with 4 mg documented as administered by other  
12 nurses, leaving 1 mg unaccounted for.

13           28. On or around August 4, 2006, Respondent failed to account for 1 mg of  
14 Versed® in the case of Patient No. 9271420. (Respondent dispensed 2 mg and documented 1 mg  
15 waste. It should be noted there is no M.D. order for this drug for this patient, and there is no  
16 documentation that this drug was ever administered to the patient under whose name it was  
17 dispensed.)

18           29. On or around August 8, 2006, Respondent failed to account for 5 ml of  
19 Lortab® Elixir in the case of Patient Account No. 9281413. (Respondent dispensed 15 ml from  
20 automated distribution system and documented that she gave 10 ml to the patient without  
21 accounting for the remaining 5 ml).

22           30. On or around August 8, 2006, Respondent failed to account for 4 mg of  
23 morphine in the case of Patient No. 9278037. (Respondent documented two verbal orders for  
24 doses of 4 mg each, and documented that she administered the two doses, but she dispensed a  
25 third 4 mg dose without accounting for it.)

26           31. On or around August 22, 2006, Respondent documented administering 1  
27 mg Dilaudid® for which there was no doctor's order in the case of Patient No. 930427.  
28 (Respondent documented a verbal order of 1 mg Dilaudid but dispensed 2 mg at 02:40 without

1 documenting waste; she documented administering another 1 mg dose at 04:30, although there  
2 was no documented doctor's order for a second dose.)

3 32. On or around August 22, 2006, Respondent failed to document an M.D.  
4 order for the Vicodin® "starter pack" that she dispensed in the case of Patient No. 9306531.

5 33. On or around September 7, 2006, Respondent failed to document an M.D.  
6 order for her administration of a Vicodin® tablet in the case of Patient No. 9339581.

7 34. On or around September 15, 2006, Respondent failed to account for 1 mg  
8 Dilaudid® in the case of Patient No. 9352659. (Respondent dispensed 2 mg Dilaudid® for this  
9 patient at 03:57, when there was no M.D. order for the drug, and , only documented 1 mg of the  
10 drug as wasted --at 06:04-- leaving 1 mg unaccounted for.)

11 35. On or around October 19, 2006, Respondent failed to account for 1 mg  
12 Dilaudid® in the case of Patient No. 9423591. (She dispensed 6 mg but only documented  
13 administering 5 mg -- 5 doses of 1 mg each-- on the Physician Record.)

14 36. On or around October 25, 2006 Respondent dispensed 4 mg morphine for  
15 which waste was documented incorrectly in the case of Patient No. 9430208. ( "0 mg" was  
16 witnessed as waste by nurse "BE.")

17 37. On or around October 25, 2006, Respondent failed to account for 1 mg  
18 Dilaudid® in the case of Patient No. 9434721. (Respondent dispensed 2 mg, with 1 mg  
19 witnessed as waste, leaving the other 1 mg unaccounted for.)

20 38. On or around November 7, 2006, Respondent failed to document giving the  
21 correct dose, or else failed to give the correct dose in the case of Patient No. 9462631. (The M.D.  
22 order was for ½ tablet Vicodin® immediately and the other ½ tablet for the patient to take home;  
23 Respondent dispensed 1 tablet and documented administering 1 tablet.)

24 39. On or about November 7, 2006, Respondent dispensed Zofran® ( an anti-  
25 nausea medication) for an off-duty coworker who failed to register as a patient, and who  
26 consequently had no medical record made of the care he received during that visit to the  
27 Emergency Department.

1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct: Unlawful Possession of Controlled Substance)

3 40. Respondent's registered nurse license is subject to discipline pursuant to  
4 section 2762(a) of the Code in that she unlawfully possessed or administered controlled  
5 substances. The circumstances are set forth in paragraphs 25 through 38, above.  
6

7 THIRD CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct: False Records Regarding Controlled Substances)

9 41. Respondent's registered nurse license is subject to discipline pursuant to  
10 section 2762(e) of the Code in that she made grossly incorrect or inconsistent medical record  
11 entries regarding controlled substances. The circumstances are set forth in paragraphs 25 through  
12 38, above.

13 FIRST CAUSE TO REVOKE PROBATION

14 (Failure to Obey all Federal, State and Local Laws)

15 42. At all times after the effective date of Respondent's probation, Condition 1  
16 stated:

17 **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full  
18 and detailed account of any and all violations of law shall be reported by  
19 Respondent to the Board in writing within seventy-two (72) hours of occurrence.  
20 To permit monitoring of compliance with this condition, Respondent shall submit  
completed fingerprint forms and fingerprint fees within 45 days of the effective  
date of the decision, unless previously submitted as part of the licensure  
application process.

21 43. Respondent's probation is subject to revocation because she failed to  
22 comply with Probation Condition 1, referenced above. The facts and circumstances regarding  
23 this violation are that Respondent violated Business and Professions Code sections  
24 2761(a)(1)-Incompetence or Gross Negligence, as set forth in paragraphs 24 through 39, above,  
25 2762(a)-Unlawful Possession of Controlled Substances, as set forth in paragraph 40, above, and  
26 2762(e)-False Records Regarding Controlled Substances, as set forth in paragraph 41, above.

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1                   47.     Respondent's probation is subject to revocation because she failed to  
2 comply with Probation Condition 8, referenced above. The facts and circumstances regarding  
3 this violation are that Respondent failed to obtain Board approval to continue to work at San  
4 Ramon Regional Medical Center as an Emergency Department Nurse Director, a position she  
5 held for approximately 16 months after her probation began, until she was approved for a staff  
6 nurse position effective May 25, 2006. The circumstances are more fully described in paragraphs  
7 18-21, above.

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9                   FOURTH CAUSE TO REVOKE PROBATION

10                   (Failure to Obtain Approval of Supervision Level)

11                   48.     At all times after the effective date of Respondent's probation, Condition 9  
12 stated:

13                   **Supervision.** Respondent shall obtain prior approval from the Board regarding  
14 Respondent's level of supervision and/or collaboration before commencing or  
continuing any employment as a registered nurse, or education and training that  
includes patient care.

15                   Respondent shall practice only under the direct supervision of a registered  
16 nurse in good standing (no current discipline) with the Board of Registered  
Nursing, unless alternative methods of supervision and/or collaboration (e.g., with  
an advanced practice nurse or physician) are approved.

17                   Respondent's level of supervision and/or collaboration may include, but is  
not limited to the following:

18                   (a)     Maximum - The individual providing supervision and/or collaboration is  
present in the patient care area or in any other work setting at all times.

19                   (b)     Moderate - The individual providing supervision and/or collaboration is in  
the patient care unit or in any other work setting at least half the hours Respondent  
20 works.

21                   (c)     Minimum - The individual providing supervision and/or collaboration has  
person-to-person communication with Respondent at least twice during each shift  
worked.

22                   (d)     Home Health Care - If Respondent is approved to work in the home health  
care setting, the individual providing supervision and/or collaboration shall have  
23 person-to-person communication with Respondent as required by the Board each  
work day. Respondent shall maintain telephone or other telecommunication  
24 contact with the individual providing supervision and/or collaboration as required  
by the Board during each work day. The individual providing supervision and/or  
25 collaboration shall conduct, as required by the Board, periodic, on-site visits to  
patients' homes visited by Respondent with or without Respondent present.

26  
27                   49.     Respondent's probation is subject to revocation because she failed to  
28 comply with Probation Condition 9, referenced above. The facts and circumstances regarding

1 this violation are that Respondent failed to obtain approval regarding the level of supervision she  
2 received while continuing to work at San Ramon Regional Medical Center as an Emergency  
3 Department Nurse Director for approximately 16 months after her probation began, until she was  
4 approved for a staff nurse position effective May 25, 2006. The circumstances are more fully  
5 described in paragraphs 18-21, above.

#### 6 7 FIFTH CAUSE TO REVOKE PROBATION

8 (Failure to Comply with Employment Limitations)

9 50. At all times after the effective date of Respondent's probation, Condition  
10 10 stated:

11 **Employment Limitations.** Respondent shall not work for a nurse's registry, in  
12 any private duty position as a registered nurse, a temporary nurse placement  
13 agency, a traveling nurse, or for an in-house nursing pool.  
14 Respondent shall not work for a licensed home health agency as a visiting nurse  
15 unless the registered nursing supervision and other protections for home visits  
16 have been approved by the Board. Respondent shall not work in any other  
17 registered nursing occupation where home visits are required.  
18 Respondent shall not work in any health care setting as a supervisor of registered  
19 nurses. The Board may additionally restrict Respondent from supervising  
20 licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case  
21 basis.

22 Respondent shall not work as a faculty member in an approved school of  
23 nursing or as an instructor in a Board approved continuing education program.  
24 Respondent shall work only on a regularly assigned, identified and predetermined  
25 worksite(s) and shall not work in a float capacity.

26 If Respondent is working or intends to work in excess of 40 hours per  
27 week, the Board may request documentation to determine whether there should be  
28 restrictions on the hours of work.

21 51. Respondent's probation is subject to revocation because she failed to  
22 comply with Probation Condition 10, referenced above. The facts and circumstances regarding  
23 this violation are that Respondent continued to work at San Ramon Regional Medical Center as  
24 an Emergency Department Nurse Director, a position that involved supervising other nurses, for  
25 approximately 16 months after her probation began, until she was approved for a staff nurse  
26 position effective May 25, 2006. The circumstances are more fully described in paragraphs 18-  
27 21, above.

1 PRAYER


2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking the probation that was granted by the Board of Registered  
5 Nursing in Case No. 2004-89 and imposing the disciplinary order that was stayed thereby  
6 revoking Registered Nurse License No. 369761 issued to Kathleen E. Kelley;

7 2. Revoking or suspending Registered Nurse License No. 369761, issued to  
8 Kathleen E. Kelley;

9 3. Taking such other and further action as deemed necessary and proper.

10  
11 DATED: 10/2/07

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13   
14 RUTH ANN TERRY, M.P.H., R.N.  
15 Executive Officer  
16 Board of Registered Nursing  
17 Department of Consumer Affairs  
18 State of California  
19 Complainant

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SF2007401908

**Exhibit A**

**Decision and Order**

**Board of Registered Nursing Case No. 2004-89**

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KATHLEEN E. KELLEY  
2030 Four Oaks Hollow  
San Ramon, CA 94583

Registered Nurse License No. 369761

Respondent

Case No. 2004-89

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on January 2, 2005.

IT IS SO ORDERED December 3, 2004.

*Sandra L. Erickson*

President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 BILL LOCKYER, Attorney General  
of the State of California  
2 NICHOLAS A. SANCHEZ, State Bar No. 207998  
Deputy Attorney General  
3 California Department of Justice  
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5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7 **BEFORE THE**  
8 **BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2004-89

11 KATHLEEN E. KELLEY  
2030 Four Oaks Hollow  
12 San Ramon, CA 94583

OAH No. N2003120529

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

13 Registered Nursing License No. 369761

14 Respondent.

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
17 above-entitled proceedings that the following matters are true:

18 PARTIES

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of  
20 the Board of Registered Nursing. She brought this action solely in her official capacity and is  
21 represented in this matter by Bill Lockyer, Attorney General of the State of California, by  
22 Nicholas A. Sanchez, Deputy Attorney General.

23 2. Respondent Kathleen E. Kelley (Respondent) is represented in this  
24 proceeding by attorney John L. Fleer, whose address is Law Offices of John L. Fleer, 91 Tara  
25 Road, Orinda, CA 94563.

26 3. On or about March 31, 1984, the Board of Registered Nursing issued  
27 Registered Nursing License No. 369761 to Kathleen E. Kelley (Respondent). The License was in  
28 / / /

1 full force and effect at all times relevant to the charges brought in Accusation No. 2004-89 and  
2 will expire on April 30, 2004, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2004-89 was filed before the Board of Registered Nursing  
5 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The  
6 Accusation and all other statutorily required documents were properly served on Respondent on  
7 October 31, 2003. Respondent timely filed her Notice of Defense contesting the Accusation. A  
8 copy of Accusation No. 2004-89 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and  
11 understands the charges and allegations in Accusation No. 2004-89. Respondent has also  
12 carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
13 Settlement and Disciplinary Order.

14 6. Respondent is fully aware of her legal rights in this matter, including the  
15 right to a hearing on the charges and allegations in the Accusation; the right to be represented by  
16 counsel at her own expense; the right to confront and cross-examine the witnesses against her;  
17 the right to present evidence and to testify on her own behalf; the right to the issuance of  
18 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
19 reconsideration and court review of an adverse decision; and all other rights accorded by the  
20 California Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up  
22 each and every right set forth above.

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in  
25 Accusation No. 2004-89.

26 9. Respondent agrees that her Registered Nursing License is subject to  
27 discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the  
28 Disciplinary Order below.



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1                   **Severability Clause.** Each condition of probation contained herein is a separate  
2 and distinct condition. If any condition of this Order, or any application thereof, is declared  
3 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other  
4 applications thereof, shall not be affected. Each condition of this Order shall separately be valid  
5 and enforceable to the fullest extent permitted by law.

6                   1.       **Obey All Laws.** Respondent shall obey all federal, state and local laws.  
7 A full and detailed account of any and all violations of law shall be reported by Respondent to  
8 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of  
9 compliance with this condition, Respondent shall submit completed fingerprint forms and  
10 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted  
11 as part of the licensure application process.

12                   2.       **Criminal Court Orders:** If Respondent is under criminal court orders,  
13 including probation or parole, and the order is violated, this shall be deemed a violation of these  
14 probation conditions, and may result in the filing of an accusation and/or petition to revoke  
15 probation.

16                   3.       **Comply with the Board's Probation Program.** Respondent shall fully  
17 comply with the conditions of the Probation Program established by the Board and cooperate  
18 with representatives of the Board in its monitoring and investigation of the Respondent's  
19 compliance with the Board's Probation Program. Respondent shall inform the Board in writing  
20 within no more than 15 days of any address change and shall at all times maintain an active,  
21 current license status with the Board, including during any period of suspension.

22                   Upon successful completion of probation, Respondent's license shall be fully  
23 restored.

24                   4.       **Report in Person.** Respondent, during the period of probation, shall  
25 appear in person at interviews/meetings as directed by the Board or its designated  
26 representatives.

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1                   5.       **Residency, Practice, or Licensure Outside of State.** Periods of  
2 residency or practice as a registered nurse outside of California shall not apply toward a reduction  
3 of this probation time period. Respondent's probation is tolled, if and when she resides outside  
4 of California. Respondent must provide written notice to the Board within 15 days of any change  
5 of residency or practice outside the state, and within 30 days prior to re-establishing residency or  
6 returning to practice in this state.

7                   Respondent shall provide a list of all states and territories where she has ever been  
8 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further  
9 provide information regarding the status of each license and any changes in such license status  
10 during the term of probation. Respondent shall inform the Board if she applies for or obtains a  
11 new nursing license during the term of probation.

12                   6.       **Submit Written Reports.** Respondent, during the period of probation,  
13 shall submit or cause to be submitted such written reports/declarations and verification of actions  
14 under penalty of perjury, as required by the Board. These reports/declarations shall contain  
15 statements relative to Respondent's compliance with all the conditions of the Board's Probation  
16 Program. Respondent shall immediately execute all release of information forms as may be  
17 required by the Board or its representatives.

18                   Respondent shall provide a copy of this Decision to the nursing regulatory agency  
19 in every state and territory in which she has a registered nurse license.

20                   7.       **Function as a Registered Nurse.** Respondent, during the period of  
21 probation, shall engage in the practice of registered nursing in California for a minimum of 24  
22 hours per week for 6 consecutive months or as determined by the Board.

23                   For purposes of compliance with the section, "engage in the practice of registered  
24 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or  
25 work in any non-direct patient care position that requires licensure as a registered nurse.

26                   The Board may require that advanced practice nurses engage in advanced practice  
27 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the  
28 Board.

1           If Respondent has not complied with this condition during the probationary term,  
2 and Respondent has presented sufficient documentation of her good faith efforts to comply with  
3 this condition, and if no other conditions have been violated, the Board, in its discretion, may  
4 grant an extension of Respondent's probation period up to one year without further hearing in  
5 order to comply with this condition. During the one year extension, all original conditions of  
6 probation shall apply.

7           **8. Employment Approval and Reporting Requirements.** Respondent  
8 shall obtain prior approval from the Board before commencing or continuing any employment,  
9 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
10 performance evaluations and other employment related reports as a registered nurse upon request  
11 of the Board.

12           Respondent shall provide a copy of this Decision to her employer and immediate  
13 supervisors prior to commencement of any nursing or other health care related employment.

14           In addition to the above, Respondent shall notify the Board in writing within  
15 seventy-two (72) hours after she obtains any nursing or other health care related employment.  
16 Respondent shall notify the Board in writing within seventy-two (72) hours after she is  
17 terminated or separated, regardless of cause, from any nursing, or other health care related  
18 employment with a full explanation of the circumstances surrounding the termination or  
19 separation.

20           **9. Supervision.** Respondent shall obtain prior approval from the Board  
21 regarding Respondent's level of supervision and/or collaboration before commencing or  
22 continuing any employment as a registered nurse, or education and training that includes patient  
23 care.

24           Respondent shall practice only under the direct supervision of a registered nurse  
25 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative  
26 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)  
27 are approved.

28   / / /

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

10. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

///

1 Respondent shall work only on a regularly assigned, identified and predetermined  
2 worksite(s) and shall not work in a float capacity.

3 If Respondent is working or intends to work in excess of 40 hours per week, the  
4 Board may request documentation to determine whether there should be restrictions on the hours  
5 of work.

6 11. **Complete a Nursing Course(s).** Respondent, at her own expense, shall  
7 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later  
8 than six months prior to the end of her probationary term.

9 Respondent shall obtain prior approval from the Board before enrolling in the  
10 course(s). Respondent shall submit to the Board the original transcripts or certificates of  
11 completion for the above required course(s). The Board shall return the original documents to  
12 Respondent after photocopying them for its records.

13 12. **Cost Recovery.** Respondent shall pay to the Board costs associated with  
14 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the  
15 amount of \$1,769.25. Respondent shall be permitted to pay these costs in a payment plan  
16 approved by the Board, with payments to be completed no later than three months prior to the  
17 end of the probation term.

18 If Respondent has not complied with this condition during the probationary term,  
19 and Respondent has presented sufficient documentation of her good faith efforts to comply with  
20 this condition, and if no other conditions have been violated, the Board, in its discretion, may  
21 grant an extension of Respondent's probation period up to one year without further hearing in  
22 order to comply with this condition. During the one year extension, all original conditions of  
23 probation will apply.

24 13. **Violation of Probation.** If Respondent violates the conditions of her  
25 probation, the Board after giving Respondent notice and an opportunity to be heard, may set  
26 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's  
27 license.

28 / / /

1           If during the period of probation, an accusation or petition to revoke probation has  
2   been filed against Respondent's license or the Attorney General's Office has been requested to  
3   prepare an accusation or petition to revoke probation against Respondent's license, the  
4   probationary period shall automatically be extended and shall not expire until the accusation or  
5   petition has been acted upon by the Board.

6           14.   **License Surrender.** During Respondent's term of probation, if she ceases  
7   practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of  
8   probation, Respondent may surrender her license to the Board. The Board reserves the right to  
9   evaluate Respondent's request and to exercise its discretion whether to grant the request, or to  
10  take any other action deemed appropriate and reasonable under the circumstances, without  
11  further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent  
12  will no longer be subject to the conditions of probation.

13           Surrender of Respondent's license shall be considered a disciplinary action and  
14  shall become a part of Respondent's license history with the Board. A registered nurse whose  
15  license has been surrendered may petition the Board for reinstatement no sooner than the  
16  following minimum periods from the effective date of the disciplinary decision:

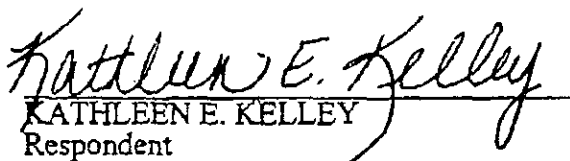
17           (1)   Two years for reinstatement of a license that was surrendered for any  
18  reason other than a mental or physical illness; or

19           (2)   One year for a license surrendered for a mental or physical illness.

1 ACCEPTANCE

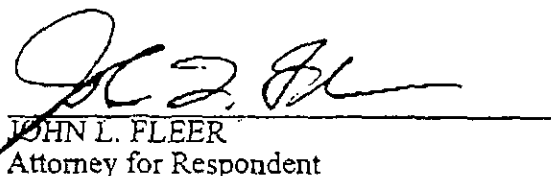
2 I have carefully read the above Stipulated Settlement and Disciplinary Order and  
3 have fully discussed it with my attorney, John L. Fleer. I understand the stipulation and the effect  
4 it will have on my Registered Nursing License. I enter into this Stipulated Settlement and  
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
6 Decision and Order of the Board of Registered Nursing.

7 DATED: 3-10-04.

8  
9   
10 KATHLEEN E. KELLEY  
11 Respondent  
12  
13  
14

15 I have read and fully discussed with Respondent Kathleen E. Kelley the terms and  
16 conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
17 Order. I approve its form and content.

18 DATED: 3-15-04.

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20   
21 JOHN L. FLEER  
22 Attorney for Respondent  
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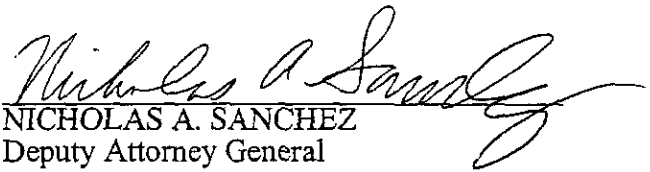
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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 3/16/2004.

BILL LOCKYER, Attorney General  
of the State of California

  
NICHOLAS A. SANCHEZ  
Deputy Attorney General

Attorneys for Complainant

SF2003400489

**Exhibit A**  
**Accusation No. 2004-89**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 NICHOLAS A. SANCHEZ, State Bar No. 207998  
Deputy Attorney General  
3 California Department of Justice  
455 Golden Gate Avenue, Suite 11000  
4 San Francisco, CA 94102-7004  
Telephone: (415) 703-5585  
5 Facsimile: (415) 703-5480  
6 Attorneys for Complainant

7  
8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2004-89

12 **KATHLEEN E. KELLEY**  
2030 Four Oaks Hollow  
13 San Ramon, California 94583

**A C C U S A T I O N**

14 Registered Nursing License No. 369761

15 Respondent.

16  
17 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

18 **PARTIES**

- 19 1. Complainant brings this Accusation solely in her official capacity as the  
20 Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.  
21 2. On or about March 31, 1984, the Board of Registered Nursing issued  
22 Registered Nurse License number 369761 to Kathleen E. Kelley ("Respondent"). The license  
23 was in full force and effect at all times relevant to the charges brought herein and will expire on  
24 April 30, 2004, unless renewed.

25 **STATUTORY PROVISIONS**

- 26 3. This Accusation is brought before the Board of Registered Nursing  
27 ("Board"), Department of Consumer Affairs, under the authority of the following laws. All  
28 section references are to the Business and Professions Code ("Code") unless otherwise indicated.

1           4.       Section 2750 of the Code provides, in pertinent part, that the Board may  
2 discipline any licensee, including a licensee holding a temporary or an inactive license, for any  
3 reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

4           5.       Section 2764 of the Code provides, in pertinent part, that the expiration of  
5 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding  
6 against the licensee or to render a decision imposing discipline on the license. Under section  
7 2811 subdivision (b) of the Code, the Board may renew an expired license at any time within  
8 eight years after the expiration.

9           6.       Section 2761 subdivision (a) of the Code states, in pertinent part, that the  
10 board may take disciplinary action against a licensed nurse for unprofessional conduct.

11           7.       Section 2762 of the Code states:

12                 "In addition to other acts constituting unprofessional conduct within the meaning  
13 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed  
14 under this chapter to do any of the following:

15                 (a) Obtain or possess in violation of law, or prescribe, or except as directed by a  
16 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish  
17 or administer to another, any controlled substance as defined in Division 10 (commencing with  
18 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as  
19 defined in Section 4022.

20           8.       Section 125.3 of the Code provides, in pertinent part, that the Board may  
21 request the administrative law judge to direct a licensee found to have committed a violation or  
22 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
23 and enforcement of the case.

24                 **DRUGS**

25           9.       "Phentermine," is a Schedule IV controlled substance as designated by  
26 Health and Safety Code section 11057, subdivision (f)(2).

27         ///

28         ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Obtained, Possessed, Self-Administered and Furnished a Controlled Substance)**

3 10. Respondent is subject to disciplinary action under Code section 2761,  
4 subdivision (a), on the grounds of unprofessional conduct as defined in Code section 2762,  
5 subdivision (a), in that on or about April 15, 2002, and July 22, 2002, while practicing as a  
6 licensed registered nurse at San Ramon Regional Medical Center, San Ramon, California,  
7 Respondent did the following, any one of which, in and of itself, is an independent basis for  
8 discipline:

9 a. Obtained Phentermine, a controlled substance, by fraud, deceit,  
10 misrepresentation or subterfuge or by the concealment of a material fact, in violation of Health  
11 and Safety Code section 11173, subdivision (a), by forging prescriptions in the name of a friend,  
12 P.C., for the above medication for her own personal use.

13 b. Possessed Phentermine, a controlled substance, in violation of Business and  
14 Professions Code section 4060, in that Respondent did not have a prescription.

15 c. Self-administered Phentermine, a controlled substance, without lawful  
16 direction from a licensed physician and surgeon, dentist, or podiatrist.

17 d. Furnished Phentermine, a controlled substance, to a friend, P.C.<sup>1</sup>

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
20 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

21 1. Revoking or suspending Registered Nurse License number 369761, issued  
22 to Kathleen E. Kelley;


23 2. Ordering Kathleen E. Kelley to pay the Board of Registered Nursing the  
24 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
25 Professions Code section 125.3; and,

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28 1. Initials are used to protect the privacy of the patient. The patient's full name will be  
provided following a request for discovery.

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3. Taking such other and further action as deemed necessary and proper.

DATED: 10/28/03

  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

SF2003400489